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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/780,807	02/09/2001	Stefan Thiem	LNUP:101_US_	8654

24041 7590 06/02/2004  
SIMPSON & SIMPSON, PLLC  
5555 MAIN STREET  
WILLIAMSVILLE, NY 14221-5406

EXAMINER
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GORDON, BRIAN R

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 06/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/780,807

Applicant(s)

THIEM ET AL.

Examiner

Brian R. Gordon

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 3-19-04.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5-9 is/are allowed.
- 6) ☐ Claim(s) 3, 4, 10 and 11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Priority*

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 3-4, 10, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Ljungmann, US 6,017,495.

Ljungmann discloses a staining apparatus for staining of tissue specimens placed on microscope slides comprises a number of staining stations (4) and other working stations (1, 2, 3), where the staining stations (4) receive vessels (5) having liquid baths for receiving baskets containing microscope slides with the topical specimens, and a transport mechanism (17-20) having a hoisting device (17) arranged to be moved over the vessels (5) and to place baskets in or take these up from the vessels, and to transfer the baskets between the working stations (1-4) in accordance with a programme-controlled staining process.

Ljungmann teaches that in microscopic examination of cell and tissue specimens it is necessary with a preparation of the specimens in accordance with certain mutually

dependent working steps. After fixation and embedment of the specimens, the specimen blocks must be cut. **In order to enable an easy microscopic examination, the embedment medium must be removed, and thereafter the specimens are stained.**

The staining apparatus shown in FIG. 1 is constructed to be able to carry out all types of routine and special staining processes within the field of histology and cytology. In the illustrated embodiment the apparatus includes 36 working stations, but this number can be increased, for example to 50 stations. The stations may e.g. comprise four to five fetching/unloading stations, four to five **waiting/stove stations**, four to five water rinsing stations and twenty to thirty staining stations. In FIG. 1, said station types--in the above-mentioned order--is designated by the reference numerals 1, 2, 3 and 4. Each of the staining stations 4 receives a container or vessel 5 having a dyeing bath 6 (see FIG. 2) for the reception of baskets 7 containing microscope slides with the topical tissue specimens. In a corresponding manner vessels 8 for input and output of baskets are arranged at the fetching/unloading stations 1, and on the rinsing stations 3 there are arranged suitable containers or vessels 9 for rinsing water baths.

As shown, the **waiting/stove stations 2** are shaped as an **upwardly open casing 14 (melting container for containing a plurality of baskets)** having an upper edge for the support of slide baskets 7 in a number of stove positions corresponding to the individual stations. The stations are heated by means of hot air supplied from a fan 15 in combination with a heating element (not shown).

The electronic units, which are based on microprocessor technology, **controls the operation of the apparatus** in accordance with the topical programme. The apparatus has a memory (EEPROM) in which there may be stored up to 32 different programmes. Up to three different programmes can be in operation simultaneously. The electronic units give the possibility for print-out of staining or dyeing programme and baths conditions. Further, there is a possibility for automatic warning of dyeing bath conditions.

As to the melting container having openings for air to be directed onto the slides. As recited above the device comprises a fan 15 which may cause the air to enter the opening of the casing or what appear to be openings on the side (Figure 2) of the casing. Furthermore the basket (containing openings) may also be considered a melting container.

As to claim 4, it is inherent that there is some means for controlling the temperature via the combination of the fan and the heating element. Furthermore, figure 2, shows the device as comprising some type of temperature means.

As to claim 10, the waiting/stove stations are separate and the idea of the stations being retrofittable would be a decision of the operator, owner, mechanic, or any other people with the authority and knowledge to repair, improve, or upgrade the device.

As to claim 11, the apparatus is also provided with a sucking-out means 32 comprising a ventilating fan that may be employed to suck out fumes as well as heated air away from the stations.

***Allowable Subject Matter***

4. Claims 5-9 are allowed.
5. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record does not teach nor suggest a device comprising a heating station comprising two melting containers arranged next to one another, and the temperature in each of said two melting containers can be adjusted separately by way of said controller, nor a lifting device comprising tow transport rails, arranged parallel to one another, which are each equipped with a transport notch in a region of said plurality of reagent containers and with a sawtooth profile in a region of said heating station, whereby in said region of said plurality of reagent containers with one transport stroke, and in said region of said heating station said plurality of transport baskets travel a shorter distance with the same stroke.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

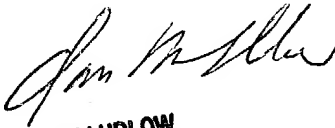
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian R. Gordon whose telephone number is 571-272-1258. The examiner can normally be reached on M-F, with 2nd and 4th F off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

brg

  
JAN LUDLOW  
PRIMARY EXAMINER